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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,425	08/02/2006	Istvan Lindmayer	3347-0104PUS1	1488
2292 7590 03/19/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER LONG, DONNELL ALAN				
ART UNIT 4128		PAPER NUMBER		
NOTIFICATION DATE 03/19/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/553,425

Applicant(s)

LINDMAYER, ISTVAN

Examiner

DONNELL LONG

Art Unit

4128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 2/1/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what comprises "opening members," "sealing elements," and "known completing elements."

The phrases "such as" and "if necessary" render claim 1 indefinite because it is unclear whether the limitations following the phrases are part of the claimed invention.

See MPEP § 2173.05(d).

Claim 1 recites the limitation "the opening elements consist of..." in line 8. There is insufficient antecedent basis for this limitation in the claim.

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what is meant by the "using any known connecting structure."

The term "like" renders claim 2 indefinite because it is unclear whether the limitations following the term are part of the claimed invention. See MPEP § 2173.05(d).

4. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "seating in the groove (28) formed by the cover wall (24) and the parallel downward directed inner wall (26)." There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 4, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Collins (5037015) in view of Beck (4795044).

Regarding claim 1, the transitional phrases, "containing" (line 2) and "characterized by" (line 6) are inclusive or open-ended and do not exclude additional, unrecited elements. These phrases conflict with the phrases "consisting of" (line 1) and "consists of" (line 6), which exclude any element not specified in the claim. For purposes of examination, the phrases, "consisting of" and "consists of," are interpreted as "comprising." Like the phrases, "containing" and "characterized by," the phrase, "comprising," is inclusive or open-ended and does not exclude additional, unrecited elements. See MPEP § 2111.03.

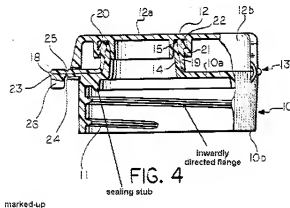
In light of the specification, the "lower mounting part" and "mounting part" are understood to be the same structural element.

Collins discloses a dispensing apparatus comprising,
a lower mounting part (32) capable of being fixed onto the neck of a bottle;
an upper covering part (38) containing a valve (72);
an outlet (42) comprising an outlet base (44) belonging to the mounting part (32) and an outlet over (46) belonging to the cover (38), further comprising a valve case (33) belonging to the mounting part (10), wherein the cover is provided with a holding tube (18) surrounding the valve case, but does not reach the upper level of the valve case (i.e. does not touch the upper level of the valve case; also figs. 3a and 3b).

The Beck reference DIFFERS in that it does not disclose that the dispensing cap comprises a fixing member in the outlet, having a once breakable joint to the upper outer end of the outlet over, passing under the holding tube, and supported by the valve case and surrounding the valve. Attention, however, is directed to the Beck reference, which discloses a dispensing cap for a bottle comprising a fixing member (16), having an once breakable joint (24a) to the upper outer end of an outlet over (12a), passing under a holding tube (22a), and supported by a valve case (14a) and surrounding a valve (15a; also figs. 5-7). It, therefore, would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Collins reference in view of the teachings of the Beck reference in order to allow the user to determine whether the dispensing cap was tampered with (col. 2, lines 5-9 of the Beck reference).

Regarding claim 3, the dispensing cap of the Beck reference comprises a cylindrical shell (10b) capable of being tightly seated on the neck of a bottle and having an inwardly directed fixing flange (11) on its lower end capable of being joined permanently under the outside flange of the neck of a bottle after mounting.

Regarding claim 4, the mounting part of the Beck reference is provided with an inwardly directed flange (marked-up fig. 4) capable of being elastically seated from outside to the neck of a bottle and sealing stub (marked-up fig. 4) capable of entering the mouth of a bottle and elastically seating from inside to it.

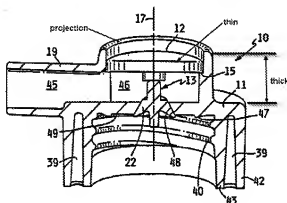


Regarding claims 7 and 10, the mounting part, the cover, and the fixing member are manufactured as one piece, i.e. they are connected in the process of manufacturing (figs. 2, 3, 5, and 6).

3. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Collins (as discussed supra) in view of Shwery (5299718).

The Collins reference DIFFERS in that it does not disclose that a diaphragm is shaped by reducing the thickness of the top of the cover around the valve and complemented with a projection surrounding it. Attention, however, is directed to the

Shwery reference, which discloses a dispensing cap for a bottle comprising a cover (11) having a diaphragm (12) that is shaped by reducing the thickness of the top of the cover around a valve (22) and complemented with a projection surrounding it (marked-up fig. 1). It, therefore, would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Beck reference in view of the teachings of the Shwery reference because the diaphragm of the Shwery apparatus is easier to use and the projections prevent unintended actuation of the diaphragm.



marked-up **FIG. 1**

4. Claims 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beck (as discussed supra) in view of Goodall et al. (6679403).

The Beck reference DIFFERS in that it does not disclose that dowel holes are formed in the mounting part and dowel pins entering the dowel holes are formed in the cover to join permanently together the lower and upper parts of the dispensing cap. Attention, however, is directed to the Goodall et al. reference, which discloses a dispensing cap for bottles comprising dowel holes formed in a mounting part (212), and dowel pins entering the dowel holes formed on a cover (230), capable of joining

permanently together the lower and upper parts of the dispensing cap. It, therefore, would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Beck reference in view of the teachings of the Goodall et al. reference in order to more effectively secure the cover to the mounting part, which would prevent the unintended opening of the cap. The placement of the dowel holes on the mounting part and the dowel pins on the cover are a mere design preference and it would have been obvious to one having ordinary skill in the art that the dowel holes and dowel pins could perform the same function, whether they are placed on the mounting part or the cover.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **DONNELL LONG** whose telephone number is (571)270-5610. The examiner can normally be reached on Monday through Friday, 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DL
Art Unit 4128

/Khoa D. Huynh/
Supervisory Patent Examiner, Art Unit 4128